

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Section 3591.6, Subsection (a)

Gypsy Moth Eradication Area

INITIAL STATEMENT OF REASONS/

POLICY STATEMENT OVERVIEW

Description of Public Problem, Administration Requirement, or Other Condition or Circumstance
the Regulation is Intended to Address

This regulation is intended to address the obligation of the Department of Food and Agriculture to protect the agricultural industry from the movement and spread of injurious plant pests within California.

Specific Purpose and Factual Basis

The specific purpose of Section 3591.6 is to provide authority to the State to eradicate infestations of *Lymantria dispar* from within the declared eradication area by the established means and methods.

The factual basis for the determination by the Department that the amendment of this regulation is necessary is as follows:

Gypsy moth, *Lymantria dispar*, is a serious pest of fruit, forest and shade trees. In the eastern United States the pest has, by repeated defoliation, killed many trees. If left uncontrolled it can destroy native forest and wooded areas and, in orchard and urban areas, pesticide use may be necessary to eradicate the insect and prevent damage to crops and ornamental and native trees. A defoliated watershed increases both fire and erosion potential.

Gypsy moth is a pest of national concern. The United States Department of Agriculture also maintains a Federal Domestic Quarantine Notice against gypsy moth (Section 301.45, Title 7, Code of Federal Regulations) to prevent the artificial spread of this pest to uninfested areas.

The gypsy moth goes through four stages of development: egg, larva, pupa, and moth. It usually has one generation per year, overwintering in egg masses attached to trees, stones,

walls, logs, and other outdoor objects such as outdoor furniture, automobiles, and trailers. The female moths lay their eggs in the summer in egg masses which may contain up to 1,000 eggs. In California, the eggs usually hatch in February or March, but may hatch earlier. The larvae are the destructive stage and feed until pupating in early summer. The moths emerge from the pupal or cocoon stage in 10 to 14 days as adult moths. The pests do not feed in the moth stage, but only mate and lay eggs. Hosts of the gypsy moth include oak, apple, willow, cherry, and maple.

Adult gypsy moths have recently been trapped in Orange and Santa Barbara counties. On July 31, 2006, three adult male gypsy moths were taken from a trap in the Silverado area of Orange County. On July 25, 2006, an adult male gypsy moth was taken from a trap in the Montecito area of Santa Barbara County. These finds of mature male gypsy moths are indicative of possible incipient infestations of the moth in the Silverado area of Orange County and the Montecito area of Santa Barbara County.

If the moth were allowed to spread and become established in urban, agricultural or native forests, California's forestry and nursery industries would suffer losses due to decreased production of marketable crops, host trees, and shrubs; increased pesticide use; and loss of markets if other states or countries enacted quarantines against California products. Severe damage to native plantings and forests would also occur.

The entire counties of Orange and Santa Barbara are being proposed as part of the eradication area because they are the political divisions that provide the most workable eradication area boundaries for detecting and exterminating established gypsy moth infestations. Hosts and other possible carriers which may have already been moved from the possible infested areas to another portion of the counties and moths which may have already spread naturally from the possible infested areas may have already resulted in small infestations outside the known possible infested areas. To enable rapid surveys and treatments of any of these small infestations without frequent amendment of the regulation, the entire counties should be established as an eradication area.

The gypsy moth has the capability of causing significant irreparable harm to California's agricultural industry and environment. While the Department's compliance with the

Administrative Procedure Act and the California Environmental Quality Act (CEQA) are separate actions, they can be interrelated. Although the amendment of specific regulatory authority can be the beginning of a project and therefore covered by CEQA, this is a ministerial action for an emergency and an action also for the protection of natural resources and the environment by a regulatory agency and is therefore exempt from the requirements of the CEQA statutes, under PRC Section 21080, and under Sections 15268, 15269, 15307 and 15308 of the CEQA Guidelines.

This amendment provides authority for the State to perform specific detection, control and eradication activities against gypsy moth in Orange and Santa Barbara counties. This authority includes, “The searching for all stages of gypsy moth by visual inspection, the use of traps, or any other means.” It was immediately necessary to perform these activities within the Silverado area of Orange County and the Montecito area of Santa Barbara County. To prevent spread of the moth to noninfested areas to protect California's agricultural industry and environment, if necessary, treatment activities against the moth have to begin by late winter. However, “The searching for all stages of gypsy moth by visual inspection, the use of traps, or any other means” had to begin immediately to determine the scope of the possible infestations in both Orange and Santa Barbara counties. Therefore, it was necessary to amend Section 3591.6(a) on an emergency basis.

Estimated Cost of Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that Section 3591.6(a) does not impose a mandate on local agencies or school districts and no reimbursement is required under Section 17561 of the Government Code.

The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the amendment of 3591.6(a).

The cost impact of the changes in the regulations on private persons and businesses are expected to be insignificant.

The Department has determined that the proposed actions will not have a significant adverse economic impact on housing costs or California business, including the ability of California businesses to compete with businesses in other states. The Department's determination that the action will not have a significant statewide adverse economic impact on business was based on the following:

The emergency amendment of Section 3591.6(a) provides authority for the Department to conduct eradication activities against gypsy moth within Orange and Santa Barbara counties and there are no known private sector cost impacts.

Assessment

The Department has made an assessment that the repeal of the regulation would not 1) create or eliminate jobs within California; 2) create new business or eliminate existing businesses with California; or 3) affect the expansion of businesses currently doing business with California.

Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Information Relied Upon

The Department relied upon the following studies, reports, and documents in the proposed adoption and subsequent amendment of Section 3591.6:

Subpart-Gypsy Moth, Section 301.45, Title 7, Code of Federal Regulations.

"Pest and Damage Record #1416761," dated July 31, 2006, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

"Pest and Damage Record #1288796," dated July 25, 2006, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

"Action Plan for Gypsy Moth, *Lymantria dispar* L.," May 2000, California Department of Food and Agriculture, Plant Health and Pest Prevention Services (eight pages).